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S.B. CIVIL MISC. APPEAL NO.998/2007.
Soma & Anr. Vs. Jagdish Bhai & Ors.

Date of Order :: 10th August 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manish Pitaliya, for the appellants.

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BY THE COURT:

By way of this appeal against the award dated 15.07.2006 made by the Motor Accidents Claims Tribunal [Addl. District Judge (Fast Track) No.5], Udaipur HQ: Salumber in Claim Case No.576/2005 the claimants, parents of about 17 years old vehicular accident victim Kumari Durga, seek enhancement over the amount of Rs.1,42,000/- awarded towards compensation.

On 06.08.2007, learned counsel for the appellants sought adjournment to prepare the matter particularly to cite several decisions in support of contentions sought to be urged in this appeal regarding inadequacy of the amount awarded. However, today learned counsel frankly submitted that in view of the later decisions of the Hon'ble Supreme Court, the earlier decision of this Court, may not be of much relevance. However, learned counsel submitted that though the Hon'ble Supreme Court in the case of Kaushlya Devi Vs. Karan Arora & Ors.: 2007 AIR SCW 3424 has approved an award in the sum of Rs.1,00,000/- for mother of the child victim in 14 years of age; but in the case of

New India Assurance Co. Ltd. Vs. Satender & Ors. : 2006 AIR SCW 6139, in respect of a child victim in about 9 years of age, the Hon'ble Supreme Court has awarded an amount of Rs.1,80,000/- towards just compensation. Learned counsel submitted that in view of the decision in Satender (supra), the amount of award as made in this case at Rs.1,42,000/- for the parents of the deceased Kumari Durga, about 18 years of age, remains on the lower side and, therefore, deserves enhancement.

The submissions for enhancement in this case cannot be accepted. The claimant Soma, father of the deceased has pointed out the age of the victim Kumari Durga at 17 years; and alleged that she was studying and was earning Rs.3,000/- per month in tuitions. The Tribunal has not accepted the assertions of the claimants on her income for want of any corroborative evidence; and after taking the notional income at Rs.15,000/- per annum and loss of contribution at Rs.10,000/- per annum, has applied a multiplier of 13, taking the age of the parents in the group of 45-50 years, and has assessed pecuniary loss for the claimants at Rs.1,30,000/-; and while allowing another Rs.12,000/- towards general damages, has made the award in the sum of Rs.1,42,000/-.

In the later decision in Kaushlya Devi (supra), while referring to the earlier decision in Satender (supra), the Hon'ble Supreme Court has pointed out thus:

> “In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.”

The Hon'ble Supreme Court in the aforesaid case after finding that the claimant was only the mother of the child victim in 14 years of age, found no scope for interference in the quantum awarded at Rs.1,00,000/-.

In the fact situation of the present case where the deceased was an unmarried girl in about 17-18 years of age, apart from the fact that income of the deceased is incapable of assessment on notional basis for plenitude of uncertainties, looking to the future scenario, the possibility of her getting married and thereby a larger part of her income or efforts getting diverted to her own family cannot be ignored. Thus, even if proceeding on the basis of notional income, it cannot be said that entire of two-third, after deducting one-third on personal expenditure of the deceased, ought to be taken towards loss of contribution for the parents.

In an overall view of the matter, the amount of compensation as awarded by the Tribunal in this case at Rs.1,42,000/- cannot be said to be too low or insufficient from any stand point; and rules out any scope for interference in appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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